

REMARKS/ARGUMENTS

At the outset, Applicant acknowledges with appreciation the Examiner's allowance of claims 17-19, 26-28 and 30-32. However, Applicant kindly requests reconsideration of the rejection of Claims 1-3, 5, 12-15, 21-24 and 29 for the reasons set forth below.

In the aforementioned Office Action, claims 1-3, 5, 12 and 21, 22 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,605,235 to Johnson in view of U.S. Patent No. 4,466,148 to Jones. Such rejection is respectfully traversed.

The Johnson device is a sundries caddy for furniture having a first horizontal section 28 that is insertable between a cushioning object and a cushion support structure of a piece of furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure. Johnson further includes a second vertical section 26 that defines a free portion of the caddy when the first horizontal section 28 is inserted between the furniture cushioning object and cushion support structure. The second section 26 carries a pocket 12 that is integrally formed therewith (note claim 1 which describes the device as being monolithic). The pocket 12 projects from the front face of vertical section 26. According to a preferred embodiment it projects one inch from the vertical section 26; see column 4, lines 9-11.

As defined in Applicant's independent Claim 1, the first and second members of the caddy are interchangeably operable as the captured portion and the free portion. That is not the case with the first and second section 28, 26 of the Johnson device. More particularly, if one were to insert the vertical pocket-carrying section 26 of the Johnson device between a furniture cushioning object and cushion support structure, the device would be rendered inoperative because the pocket 12 would be covered by the furniture cushioning object and because the now "free" portion 28 is not equipped with a pocket. Moreover, if the Johnson device were simply inverted such that vertical section 26 projected upwardly rather than downwardly with respect to horizontal section 28, the device would also be rendered inoperative because the opening of pocket 12 would face downwardly rather than upwardly.

The Examiner dismisses Applicant's recitations "wherein said first and second members are interchangeably operable as said captured portion and said free portion" and "whereby a user of the caddy can orient said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion" as mere recitations with respect to the manner in which acclaimed apparatus is intended to be employed which "does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation." Applicant respectfully disagrees.

Firstly, the cited recitations are more than simply manners in which Applicant's furniture caddy as defined in Claim 1 is intended to be employed. As to the first recitation, it is the structure of Applicant's first and second members as embodied, for example, in FIGS. 6A, 7 and 11A and 11B, that enables those members to be interchangeable as the captured and free portions. As explained above, the pocket-carrying vertical section 26 of the Johnson device must at all times be the free portion and the horizontal section 28 must always be the captured portion of the device. They are not interchangeable with one another. If one attempted to do so, he or she would be left with a useless device -- as well as a furniture cushion, mattress, or the like, with an unsightly and uncomfortable hump created by the raised pocket 12.

Additionally, Claim 1 specifies "means for connecting said receptacle to said free portion whereby a user of the caddy can orient said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion." This structural limitation is nowhere to be found in the Johnson device. Indeed, as noted above, the open end of the pocket 12 of Johnson would face downwardly if the device were inverted from its illustrated position, thereby destroying the utility of the device.

As for Jones, the Examiner relies upon that reference for the teaching of "a means 16 for connecting a receptacle to said free portion of a device." Based on this teaching, the examiner maintains that: "It would have been obvious to employ a

connecting means as taught by Jones in order to secure the receptacle to the free end of Johnson." Again, Applicant respectfully disagrees.

First, the Johnson device is expressly defined as being "monolithic." Therefore, its pocket 12 is integrally attached to the vertical section 26. Jones discloses a handgun holster 40 that is releasably connected to a vertically adjustable holster support bar 19 via a belt loop 41 (FIG. 4) or an unillustrated clip. To suggest that it would be obvious in light of Jones to detachably connect the pocket 12 of the Johnson device to the vertical section 26 is to ignore or, worse, directly conflict with a fundamental feature of the Johnson device. Applicant submits that it is not lightly to be assumed that one would find it obvious to detachably connect the pocket 12 of the Johnson device based on the conflicting teachings of the Jones reference. Indeed, such an assumption cannot be reconciled by what the Johnson and Jones devices actually teach and would, therefore, be improper.

Second, even if Jones were somehow properly combinable with Johnson -- which it is not -- the Jones reference contains no teaching or suggestion of first and second members that are interchangeably operable as the captured portion and the free portion of the device. To the contrary, the captured portion of the T-shaped bracket 12 of the handgun holster mounting device of Jones, like the captured portion 28 of Johnson, must always be the captured portion of the device and the vertical wall "free" portion of the bracket must always be the free portion of

the device. They physically are not interchangeable with one another.

Applicant thus respectfully submits that no combination of the teachings of Jones with Johnson -- whether proper or improper -- can produce the sundries caddy specifically recited in Applicant's independent Claim 1. Applicant therefore requests that the outstanding section 103(a) rejection of that claim and its dependent Claims 2, 3, 5, 12, 21 and 22 be withdrawn.

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Jones and U.S. Patent No. 4,022,361 to Devlin. Claims 14, 15 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Jones and U.S. Patent No. 5,111,545 to Krozal. And, Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Jones and U.S. Patent No. 5,916,087 to Owens.

Applicant submits that, notwithstanding what Devlin may or may not disclose with respect to Claim 13, what Krozal may or may not disclose with respect to Claims 14, 15 and 23, and what Owens may or may not disclose with respect to Claim 24, those patents cannot overcome the critical deficiencies of the Johnson and Jones reference tandem vis-à-vis independent Claim 1 from which Claims 13-15, 23 and 24 indirectly depend (through intermediate dependent Claim 12). That is, like Johnson and Jones, neither Devlin, Krozal nor Owens disclose or suggest, either expressly or impliedly, a sundries caddy for furniture having first and second members that are interchangeably

operable as the captured portion and the free portion of the caddy. Thus, no combination of Devlin, Krozal or Owens with Johnson and Jones can produce the invention set forth in Claims 13-15, 23 and 24. Accordingly, withdrawal of the outstanding Section 103(a) rejections of those claims is respectfully requested.

Turning to Applicant's independent Claim 29, that claim requires that the receptacle be permanently mounted to the free portion of the caddy. For this reason, Jones is irrelevant to any discussion of that claim.

More specifically, Claim 29 calls for "means for permanently connecting said receptacle to said free portion whereby a user of the caddy can orient said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion." As previously discussed, the open end of the pocket 12 of the Johnson device will face downwardly in the event the device were inverted from its illustrated orientation. In addition, the Johnson patent is silent with regard to any teaching of a user's ability to (1) selectively dispose the device in any position other than that illustrated, or (2) selectively orient a receptacle with respect to the free portion such that its open end always faces upwardly notwithstanding whether the free portion extends upwardly or downwardly with respect to the captured portion.

Therefore, no combination of the teachings of Johnson and Jones can produce the invention particularly recited in Applicant's independent Claim 29. Accordingly, Applicant respectfully urges that the outstanding Section 103(a) rejection of that claim be withdrawn.

Lastly, by this Amendment, Applicant reintroduces originally filed independent Claim 1 in the form of new independent Claim 33. New Claim 33 is identical to original claim 1. Applicant introduces new Claim 33 because, upon reconsideration, none of the references cited by the Examiner, alone or in any conceivable combination, disclose or suggest the sundries caddy for furniture defined therein. For example, none show, in addition to the other structural features of Claim 33:

means for connecting said receptacle to said free portion whereby a user of the caddy can orient said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion.

See Applicant's detailed comments in connection with Claim 29 regarding the patentability of this particular feature vis-à-vis the Johnson device, which comments Applicant hereby adopts, repeats and reavers.

And, again, the Johnson device is expressly defined as being "monolithic," meaning that its pocket 12 is integrally attached to the vertical section 26. As indicated above, to suggest that it would have been obvious, when considering Jones,

to wholly reconstruct the Johnson device so as to provide a detachable connection between the integrally connected pocket 12 and vertical section 26 of the Johnson device in light of the gun holster support assembly of Jones is to defy the express teachings of the Johnson reference.

To conclude, Applicant's claims must be interpreted fairly and accurately. And, the teachings of the prior art presently cited against the claims must likewise be fairly and accurately interpreted for what they in fact disclose and/or suggest. The disclosures of the cited references, when so interpreted, do not disclose or suggest Applicant's claimed invention. Therefore, the invention as a whole would not have been considered obvious to one skilled in this art at the time of Appellant's invention. Accordingly, it is respectfully submitted that it would be improper to reject independent Claim 33 based on the prior art of record.


In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

Application No.: 10/696,609
Amendment Dated: January 20, 2005
In Reply to Office Action Dated: November 5, 2004

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: January 20, 2005



John F. Letchford
Registration No. 33,328

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS LLP
260 South Broad Street
Philadelphia, PA 19102-5003
Tel.: (215) 569-3495
Fax: (215) 568-6603
E-mail: jletchford@klehr.com